COPY OF PAPERS
ORIGINALLY FILED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

MMB Docket No. **1818-0001**

Application of: **Wesley Stout**

Serial No.: **09/100,934**

Filed: **June 22, 1998**

For: **Date Formatting System**

Group Art Unit: **2171**

Examiner: **Thuy Pardo**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231 on February 1, 2002
(Date of Deposit)

Michael D. Beck
Name of person mailing Document or Fee

Michael D. Beck
Signature of person mailing Document or Fee

February 1, 2002
Date of Signature

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This is an appeal under 37 CFR § 1.191 to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office from the final rejection of the claims 5 and 6 of the above-identified patent application. These claims were indicated as finally rejected in an Office Action dated

November 21, 2001. Three copies of the brief are filed herewith, together with the $160.00 fee required under 37 CFR § 1.17(c) for a small entity. Also, please provide any extension of time which may be necessary and charge any fees which may be due to Account No. 13-0014, but not to include any payment of issue fees.

(1) REAL PARTY IN INTEREST

Wesley Stout III is the inventor, sole owner and real party in interest for this invention and patent application.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that may be related to this patent application (serial no. 09/100,934).

(3) STATUS OF CLAIMS

Claims 5 and 6 are stand finally rejected in this application and are being appealed. Each of the claims 5 and 6 is shown in the Appendix attached to this Appeal Brief.

(4) STATUS OF AMENDMENTS

Appellants have filed no amendments subsequent to the final rejection contained in the Office Action mailed November 21, 2001.

(5) SUMMARY OF INVENTION

The present invention relates generally to a method for operating a computer system to perform date operations, and more particularly to accurately perform date calculations spanning centuries. The invention was developed by Mr. Stout in response to the impending Y2K crisis. At the time of Mr. Stout's invention, concern was growing about then-existing computer or software-based date calculation methods and systems that were susceptible to error when calculating dates spanning across a century. One focal point of the problem was with two-digit year representations in which the year value "00" could be interpreted by the software as either the year 1900 or the year 2000.

The drama surrounding the Y2K issue is well known, as is the turmoil that the problem created in the computer and software industry. Panic-stricken programmers sought quick fixes to the existing software to avoid what many believed would become a global crisis at 12:01 a.m., January 1, 2000. It was this impending problem that caught Mr. Stout's attention in 1996 and that caused him to devote months of work to find a solution.

Mr. Stout's solution started with defining a date format. In the case of the invention defined in the claims on appeal, this format incorporated seven (7) digits, with the first four (4) digits representing the year and the last three (3) digits representing the day of the year. Thus, Mr. Stout contemplated a date file of the following format "YYYYDDD", so that the date May 2, 2000, for example, would be represented by the date file 2000122, as reflected in Figure 6 of the application.

The next step in Mr. Stout's invention depends upon the date calculation to be made. In one date calculation, a number of days and/or years are added to an existing date, while in another calculation it is desired to determine the difference between two dates in days and/or years. As described at page 8 of this application, this date calculation proceeds in a similar manner to that depicted in the flowchart of Figure 5. In particular, in the case of date addition, if the resulting day integers (DDD) exceed 365, Mr. Stout's invention calls for adding 635 to the sum to produce the correct 7-digit date representation.[1] Thus, if 250 days are to be added to the date May 2, 2000, Mr. Stout's invention would produce the following result:

```
 2000122                                          2000372
+    250   —>   372 > 365   —>   +    635   —>   January 7, 2001
 2000372                                          2001007
```

In the case of date subtraction, if the resulting day integers (DDD) exceed 365, Mr. Stout's invention calls for subtracting 635 from the subtraction sum to produce the correct 7-digit date representation. Thus, if one wishes to determine the number of days between December 30, 2000, and January 1, 2001, the first step of Mr. Stout's invention calls for forming the date file representation of the two dates. In this case, the two dates would be represented in Mr. Stout's seven-digit format as 2000364 and 2001001, respectively. Subtraction of the two dates

[1]. It should be noted that Mr. Stout's invention also accounts for the fact of a leap year by adding 635 if the sum exceeds 366. However, since any date system and method must work in non-leap years, Applicant's claims are not specifically limited to leap year conditions.

would produce the following result using Mr. Stout's invention:

$$\begin{array}{r} 2001001 \\ -\ \underline{2000364} \\ 637 \end{array} \quad \longrightarrow \quad 637 > 365 \quad \longrightarrow \quad \begin{array}{r} 637 \\ -\ \underline{635} \\ 2 \end{array} \quad \longrightarrow \quad \text{2 days difference}$$

Mr. Stout's invention represents an elegant solution to the problem of date determinations across century boundaries. The date addition aspect of Mr. Stout's invention is defined in claim 5, while date subtraction is accomplished by the embodiment of claim 6 of this application.

(6) GROUPING OF CLAIMS

The rejected claims 5 and 6 stand or fall together.

(7) ISSUES

The Final Rejection of claims 5 and 6 of Mr. Stout's patent application raises the following issues for appeal:

1) Whether the Examiner improperly relied upon "well known" prior art in rejecting claims 5 and 6 as obvious in view of the Adamchick U.S. Patent No. 5,761,668;

2) Whether claims 5 and 6 are unpatentable under 35 U.S.C. § 103 as being obvious in view of the Adamchick '668 Patent;

3) Whether the Examiner improperly discounted and refused to consider the inventor's declarations under 37 C.F.R. §1.131 swearing behind the Adamchick '668 Patent cited as a 102(e) reference; and

4) Whether the Examiner improperly discounted and refused to consider the inventors 131 Declarations for failing to establish diligence during the critical period.

(8) ARGUMENT

(A) Issues 1 and 2: the prior art rejection of claims 5 and 6

Claims 5 and 6 were rejected under 35 U.S.C. § 103 as being obvious in view of U.S. Patent No. 5,761,668 to Adamchick (referred to herein as "Adamchick" or "the '668 Patent"). The Board of Appeals is respectfully requested to reconsider the rejection of these two claims.

Claims 5 and 6 read as follows:

> 5. A series of operational steps to be performed by a computer, said steps comprising:
> storing a plurality of date files within the computer, each said date file having 7 integers including;
> a 4-digit decimal year represented in the first four integers of said 7 integers;
> a 3 digit decimal day represented in the last three integers of said 7 integers;
> in a central processing unit of the computer, adding said 7 integers of one of said plurality of date files to said 7 integers of another said plurality of sate files to generate a sum: and
> adding 635 to said sum when the last three integers of said sum is in excess of 365 to generate a new date file representative of a new calendar date.
>
> 6. A series of operational steps to be performed by a computer, said steps comprising:
> storing a plurality of date files within the computer, each said date file having 7 integers including;
> a 4-digit decimal year represented in the first four integers of said 7 integers;
> a 3 digit decimal day represented in the last three integers of said 7 integers;

in a central processing unit of the computer, subtracting said 7 integers of one of said plurality of date files to said 7 integers of another said plurality of sate files to generate a sum: and

subtracting 635 to said sum when the last three integers of said sum is in excess of 365 to generate a new date file representative of the number of years and days difference between the date files.

These claims were added by amendment in a response to a Final Action, filed on June 15, 2000. Original claims 1-4 were cancelled in favor of new claims 5 and 6, which were presented to more clearly focus the discussion concerning the patentability of Mr. Stout's invention. Claim 5 is substantially similar to original claim 4, which defined adding 635 to a sum of date files. New claim 6 was added to address the date subtraction aspect of Mr. Stout's invention. This claim parallels original claim 3 and the description of Mr. Stout's seven-digit embodiment at page 8 of the specification.

The history of original claim 4 is pertinent to the ensuing examination of claims 5 and 6. This application was originally filed on June 22, 1998. Unfortunately, no substantive action on this application was taken until the new millennium and after the Y2K crisis came and went. In the First Office Action, dated March 13, 2000, claim 4 was rejected as obvious in view of the combination of Adamchick with U.S. Patent No. 5,806,063 to Dickens. In that action, it was acknowledged that Adamchick did not disclose adding two date files and then optionally adding 635 to the resulting sum. See, Paper No. 8, p.4, ¶10. The Dickens patent was cited as disclosing adding the integers of one date file to another date file. Id. This rejection was repeated in an initial Final Action, dated October 2, 2000. See, Paper No. 12, p. 2, ¶5. Applicant's arguments

concerning the deficiencies of the Dickens references were dismissed as non-persuasive without any specific rebuttal.

Following several exchanges regarding 131 Declarations of Mr. Stout, Applicant filed a CPA on April 2, 2001, still continuing with the original claims 1-4. A Final Action was issued (Paper No. 21) repeating the same prior art rejection of claim 4. New claims 5 and 6 were presented in an amendment dated June 15, 2001, along with arguments distinguishing Mr. Stout's invention from the combination of Adamchick and Dickens. These arguments focused on the failure of Dickens to disclose actual date calculations or the addition of any number to a date sum, let alone the number 635. It was at this point that Dickens was dropped as a reference and the Examiner assumed the position that spawned one of the grounds for the present appeal.

In recognition that the prior art does not show generating a sum of seven digit date files and then optionally adding 635 to that sum, the new rejections relied upon combining "well known" prior art with Adamchick. More specifically, the Examiner's new position was that "this feature of adding an integer to another numbers [sic] to generate a sum is well-known in the art and well-applied in many exclusively [sic] operations". See, Paper No. 26, p.3, ¶6. The rejections continues:

> "For example, odometers and other registers turn over when they are full by adding 5 to a 3-digit register containing 999 will produce 004. In this case, the three digit decimal number of the claim is used to represent the day of a 365-day of a year. Thus, adding 5 to 364 would yield 369, not

the desired 004. The addition of 635 turns a module-1000 register into a module-365 register. It would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to add 635 to the sum as needed because it would make a decimal register into a year-day register." Id.

In response, Applicant explained that Mr. Stout's invention does not contemplate simply a three digit "module-365 register", but a seven-digit date representation. It was argued that the Examiner's register example falls short of Applicant's invention because the "desired 004" result with the module-365 register has no meaning in the context of Applicant's date calculation method. In particular, the purported example provides no indication of the year, which is incremented with Mr. Stout's invention but not with the Examiner's proposed analogous system. See, Applicant's response dated August 29, 2001, Paper No. 27.

The identical rejection was repeated in Paper No. 28, dated November 21, 2001, but no rebuttal was presented to Applicant's arguments. In a final response, filed on January 3, 2002, concurrently with a Notice of Appeal, Applicant pointed out that odometers are incremented one unit at a time, and do not contemplate adding large numbers to a particular odometer reading. See, Paper No. 29.

(1) Reliance Upon "Well-Known" Facts was in Error

The Examiner has acknowledged that the Adamchick patent does not disclose adding or subtracting date files, or adding/subtracting 635 from the

resulting sum. Applicant turned aside the early attempt to combine Dickens with Adamchick, successfully pointing out that the Dickens reference did not disclose these features of Applicant's claims 5 and 6. In the absence of any prior art publication disclosing Mr. Stout's inventive steps, the Examiner has instead turned to "well known" prior art as a basis for rejecting these claims.

This reliance upon well known prior art is in error. The Manual of Patent Examining Procedure permits the citation of well known prior art where the cited facts are "capable of instant and unquestionable demonstration as well known". M.P.E.P. §2144.03. The MPEP shifts the burden to the Examiner to cite a specific reference in the event that the Applicant seasonably challenges the cited well known facts. Applicant challenged the Examiner's recitation of the well known art and the cited examples. No publication or other reference has been produced to support any aspect of what the Examiner contends to be well known in the art.

The Court of Customs and Patent Appeals has permitted official notice of such facts that "are capable of such instant and unquestionable demonstration as to defy dispute". In re Ahlert and Kruger, 165 U.S.P.Q. 418, 420 (C.C.P.A. 1970). In this case, the facts, or examples, cited by the Examiner are in dispute. While the existence of odometers is unquestioned, the existence of an odometer that operates in multiple number increments is certainly in dispute. In the Examiner's odometer example, 5 is added to the value of a 3-digit odometer register containing 999. Applicant is not aware of any odometer that permits the

"addition" of any number, let alone any number greater than 1. Odometers simply increment as their mechanical dials rotate.

In an attempt to bring the register analogy closer to Mr. Stout's invention, the Examiner proposed that the addition of 635, as suggested in Mr. Stout's claims, somehow turns a module-1000 register into a module-365 register. Applicant does not understand this example of converting one register into another register, and no support has been presented for this contention. If this purported example is an attempt to provide scientific or mathematical support for this obviousness rejection, it is improper to simply reconstruct Mr. Stout's own invention to explain its theoretical mechanism. See, Ex parte Phillips, 28 U.S.P.Q.2d 1300, 1302 (Bd. Pat. App. 1993).

In this case, the Examiner has failed to demonstrate that the assumed facts are capable of instant and unquestionable demonstration, or that the purported facts "defy dispute". Moreover, the Examiner has failed to clearly demonstrate what facts are being presented as so well-known that they can be combined with Adamchick without specific identification. Applicant has taken exception to this indication of what is "well known", but the Examiner has not responded with anything more than a rehash of the same unsupported assertion.

In contrast the Examiner's failure to provide any evidence of what is suggested as being "well known", Applicant has presented an article from a trade journal that demonstrates quite to the contrary. In preparing this latest Request for Reconsideration (Paper No. 29), Mr. Stout conducted yet another search of the relevant literature. His research uncovered an article in the trade magazine

"Scientific Computing and Automation" entitled "Technical Approaches to Solving Year 2000 Problems". The article was published in February 1998, five months prior to Mr. Stout's filing date, so it would appear to present an accurate measure of what was truly well-known to persons of ordinary skill in the data processing art.

As Applicant pointed out, this article describes eleven "basic technical solutions" to the impending Y2K problem. None of these basic, and presumably well-known, solutions utilized Mr. Stout's seven-digit date format, and none proposed adding/subtracting 635 from a date sum, in accordance with Mr. Stout's invention. Only one of the basic solutions involved adding any number to a date span calculation (Example 10), but the approach involved adding 100 to account for a negative span result. In this application, the only written evidence of what was known in the art in 1998, this trade magazine article, shows absolutely no recognition of what the Examiner claims to be "well-known" and "well-applied".

Thus, the Examiner's attempted reliance upon well-known facts was in error. Absent the Examiner's unsupported statements, all that remains is the Adamchick patent, which has been admitted to be deficient with respect to claims 5 and 6 of Mr. Stout's application. It is believed that these grounds alone are sufficient to overturn the final rejection and remand this application for allowance of claims 5 and 6.

(2) Claims 5 and 6 are Non-Obvious

Even if the Examiner's examples can be considered as well-known prior art, these examples fail to disclose or suggest Mr. Stout's invention, even when combined with the Adamchick '668 Patent. To reiterate, Mr. Stout's invention resides in a seven-digit date representation, adding or subtracting two date files, and adding or subtracting 635 from the result if the last three integers of the sum exceed 365.

The basis of the obviousness rejection was the combination of the Examiner's presumed well-known information with the 102(e) reference Adamchick. The invention in Adamchick resides in a 6-digit representation of the calendar date. While Mr. Stout's original application included claims to a 6-digit date representation, these claims have been cancelled and new claims 5 and 6 focus on Mr. Stout's novel 7-digit date system.

In asserting the obviousness of Mr. Stout's invention, reference was made to Adamchick's discussion of Julian Date representations. In particular, at column 4, lines 19-32, Adamchick describes the Julian Date system and refers to 5-digit and 7-digit forms. However, Adamchick expressly recognizes that "the seven-digit Julian Date exhibits the same encountered drawback when the Standard Form is extended to eight digits". Col., 4, ll. 29-32. Consequently, Adamchick specifically teaches away from the pursuit of the seven-digit date representation and calculation system pioneered by Mr. Stout.

Moreover, while the Adamchick '668 Patent makes reference to certain desired properties of a date system, such as the Numeric and Arithmetic

Properties, the patent does not disclose how these properties are satisfied with any of the date representations, including Adamchick's own 6-digit representation. Instead, Adamchick simply states that modification is required of "date arithmetic routines" (col. 5, ll. 42-50), or "may involve rewriting ... (4) date arithmetic code, including computing the number of days between two dates and adding or subtracting a given number of days from a date ..." (col. 7, ll. 26-35), or requires modification of "built-in functions for performing date arithmetic" (col. 8, ll. 11-19).

Nowhere does Adamchick suggest any specific steps to be taken to accomplish date calculations using either Adamchick's 6-digit representation, or any other form of date representation. There is no disclosure or suggestion in the '668 Patent of Mr. Stout's seven-digit system and date addition/subtraction steps, including the conditional application of 635 to the resulting sum. In the absence of any printed publication spelling out these key elements of Mr. Stout's invention, the Examiner turned to the fallback position of citing "well-known" and "well-applied" examples.

As explained above, the Examiner's odometer example does not reach Applicant's invention. An odometer is not capable of adding arbitrary numbers to a given odometer reading. Instead, an odometer simply works in increments of one. When the mechanical dials of an odometer rotate one additional increment, an odometer reading of 999 becomes 000. An odometer does not have the capacity to add arbitrary amounts to a given odometer reading, and certainly is

not capable of subtracting any amounts from that reading. Thus, the odometer example proposed by the Examiner adds nothing to the Adamchick reference.

The Examiner's second example is confusing, but as best understood simply suggests the creation of a modulo-365 register. The Examiner's example of adding 5 to 364 yielding 369 instead of 004 simply tries to make a 365-day calendar into a modulo-365 register. As Applicant understands modulo registers, the registers are only capable of storing values up to a limit value. Thus, a modulo-365 register can store values from "000" to "365". Any number greater than 365 does not exist in a modulo-365 register. Thus, even accepting this example, it is clear that a modulo-365 register cannot produce a sum in excess of 365, to or from which the number 635 is added or subtracted.

Moreover, a modulo-365 register can have a value "000", which of course makes no sense when calculating calendar dates. On the other hand, in the realm of a modulo-365 register, the number 635 has no meaning. Even if this discrepancy is ignored, incrementing a modulo-365 register containing the value "364" by 635 produces the value "267" because the modulo register rolls over twice (passing through "000" twice) when incremented by 635. It is clear that the Examiner's attempt to analogize Mr. Stout's date calculation system to a modulo-365 register fails.

The Examiner has stated that, "The addition of 635 turns a module[sic]-1000 register into a module[sic]-365 register." Again, Applicant is not sure what is meant by this statement. Regardless of the meaning of this statement, it certainly does not take into account Applicant's claim 6, which refers to

subtracting 635 from a date span calculation. The Examiner has made no attempt to explain how this conversion of a modulo-1000 register is affected by the subtraction of 635. It is presumed that the same hindsight reconstruction of the invention of claim 6 will produce a different modulo register or require conversion of something other than a modulo-1000 register to yield the modulo-365 register.

Beyond these deficiencies in the Examiner's presumed well-known facts, no attempt has been made to explain how the Adamchick reference can be modified to incorporate the Examiner's examples. It has been admitted that Adamchick does not contemplate adding two date files together or adding any number to a date calculation. Adamchick does not include any specific discussion of performing a date calculation at **all.** No effort has been put forth to integrate the modulo-1000 or modulo-365 examples with the Adamchick date representations, or even to rationalize that these examples could be implemented with Adamchick.

The Examiner's imprecise and confusing manipulations of modulo arithmetic demonstrate the non-obviousness of Mr. Stout's invention of claims 5 and 6. None of the cited patents speak in terms of the modulo arithmetic proposed by the Examiner. None make any reference to the addition or subtraction of 635 from a date sum. Even the "Scientific Computing and Automation" article cited by Applicant contains nothing resembling the concoction used to reject Applicant's claims.

The Examiner's examples fail to disclose Mr. Stout's invention as defined in claims 5 and 6. Even if these examples are somehow correct statements of modulo arithmetic, no connection has been made between these examples and the Adamchick date representation system. Finally, the examples do not disclose the conditional evaluation following a date addition or subtraction, and the conditional addition/subtraction of 635 from the sum. Even as a hindsight reconstruction of Applicant's invention, the examples proposed in the office actions are defective.

In short, even if the Examiner's examples are accepted, they still do not demonstrate the obviousness of Mr. Stout's invention. Applicant has repeatedly traversed the obviousness rejections, and these traversals have gone essentially unrebutted. No attempt has been made in any office action to address Applicant's arguments or point out why these arguments fail to support the non-obviousness of the invention of claims 5 and 6. Thus, the final rejection of these claims as obvious in view of Adamchick should be reversed and claims 5 and 6 passed to allowance.

(B) Issues 3 and 4: Mr. Stout's §131 Declarations

The Adamchick '668 Patent was properly cited as a reference under 35 U.S.C. §102(e). As explained above, Adamchick only claims a 6-digit date representation, and expressly teaches away from Mr. Stout's seven-digit system, so there is no question of conflicting patent claims between the two cases.

Of course, an applicant can remove a 102(e) citation as a reference by swearing behind the reference. In the typical instance, an applicant provides a declaration under 37 C.F.R. §1.131 establishing conception prior to the critical date, or priority date, of the 102(e) reference. Where, as here, an applicant's reduction to practice comes after the critical date, the applicant must show diligence during the critical period, or from a date prior to the critical date to the reduction to practice.

In this case, the Adamchick utility patent was filed on October 29, 1996, but claims priority to a provisional filing date of March 8, 1996. For the purposes of the present application, it has been assumed that the March 8, 1996, date is the critical date, although the disclosure of the Adamchick provisional application has not been evaluated. Mr. Stout is relying upon the filing date of his application, June 22, 1998, as a constructive reduction to practice. Thus, the critical period over which Mr. Stout must show diligence is assumed to span from March 8, 1996 to June 22, 1998.

During the prosecution of this application, Mr. Stout has submitted three §131 Declarations dated June 15, 2000, November 24, 2000, and January 27, 2001. The first declaration was refused consideration by the Examiner on the grounds that it failed to establish a nexus to the claimed invention. See, Paper No. 12. The second declaration was proffered addressing this rejection. This second declaration was refused consideration on the new grounds that it failed to establish diligence during the critical period. See, Paper No. 14.

The third §131 Declaration was tendered with several documentary exhibits and explanatory paragraphs establishing Mr. Stout's reasonable diligence. This last declaration was also rejected as failing to establish diligence. See, Paper No. 18. In this rejection, an objection was presented that the documentary evidence raised the issue of an offer for use and sale.[2] In the last two rejections, the first rejection regarding a lack of nexus was not repeated, so Applicant properly assumed that this ground for refusal was withdrawn in view of Mr. Stout's second Declaration and the accompanying response.[3]

The issue presented here concerns the propriety of refusing consideration of Mr. Stout's three declarations and accompanying documentary evidence. More specifically, Applicant contends that these submissions under 37 C.F.R. §1.131 establish reasonable diligence on the part of Mr. Stout during the entire critical period.

The diligence required of Mr. Stout is simply *reasonable* diligence. See, Justus v. Appenzeller, 177 U.S.P.Q. 332, 340 (Bd. Pat. Interf. 1971). It is "immaterial that the inventor may not have taken the most expeditious course." Id. Instead, the totality of the circumstances of the inventor, including his skill and resources, must be considered in assessing reasonable diligence. See, De Solms v. Schoenwald, 15 U.S.P.Q.2d 1507, 1511 (Bd. Pat. App. & Interf. 1990).

---

[2] It is unclear whether this new "issue" was intended as a further ground for refusal of the declarations. Nevertheless, none of Mr. Stout's correspondence constitutes an offer for sale under the standards set forth by the Federal Circuit. Applicant is uncertain what constitutes an "offer for use" that might somehow diminish the legitimacy of Mr. Stout's 131 declarations.

[3] Following the filing of a CPA, the Examiner issued a first action final action that repeated every prior rejection. Following this action in the CPA, Applicant presented new claims 5 and 6 and no further rejections were issued concerning Mr. Stout's §131 Declarations.

It is essential to consider the "reasonable everyday problems and limitations encountered by an inventor." Griffith v. Kanamaru, 2 U.S.P.Q.2d 1361, 1362 (Fed. Cir. 1987).

In this case, Mr. Stout is a retired disabled veteran with a history of health problems between himself and his wife. Mr. Stout is a man of modest means and a limited military pension income. As the three §131 Declarations establish, Mr. Stout conceived his invention prior to March, 1996. After working to refine his inventive concepts, Mr. Stout consulted a patent attorney in late 1996, where he learned that the patent process was outside his current means.[4] While a patent application was out of the question at that time, Mr. Stout sought to actually reduce his invention to practice. Again, Mr. Stout did not have the facilities or resources to prove his inventive concept, so he did the only thing that he felt he could do - he sought the assistance of people of skill in the industry and of people in businesses and governmental agencies charged with finding a solution to the impending Y2K crisis.

Mr. Stout's declaration of January 27, 2001, includes copies of several letters that he sent and copies of note cards that he maintained outlining his various attempts to enlist the aid of others to actually reduce his invention to practice. While not reflected in the record, Mr. Stout could have provided dozens more similar letters and note card contact summaries. These documents demonstrate continuous attempts to get help from those with the facilities to implement and test Mr. Stout's invention.

---

[4] It appears that the patent attorney did not inform Mr. Stout of the availability of a provisional application as a means for establishing an earlier constructive reduction to practice.

During this time, Mr. Stout was dealing with his own health problems (shrapnel in the skull, prostate and heart problems) and health emergencies of his wife. As the declarations reflect, these health difficulties not only made work on his invention difficult, it also strained his limited financial resources. In spite of all of these difficulties, Mr. Stout did manage to obtain new patent counsel who performed a search that was reported to Mr. Stout on December 31, 1997. When he had saved enough money, Mr. Stout had that attorney prepare and file the present patent application.

These are the totality of the circumstances of the inventor, Mr. Stout, that must be considered in determining whether he was *reasonably* diligent during the critical period. This determination does not hinge on whether a person of greater skill or means could have accomplished a reduction to practice sooner, or whether Mr. Stout chose the best path to getting his idea to the public. The policy behind the diligence requirement is that an inventor do everything possible to bring his invention to the public. Mr. Stout did everything that he could do, and everything that he could think to do, to introduce his Y2K solution to the world. All of his correspondence reflects his great urgency to get this idea implemented. This correspondence also reflects his frustration at his inability to generate enough interest from someone to help him prove his concept.

The Examiner raised the diligence requirement to an insurmountable bar for the everyday inventor. The refusal to consider the three declarations demonstrates an indifference to the "reasonable everyday problems and limitations" faced by Mr. Stout, or the totality of his circumstances. See,

DeSolms, supra. Of course, once the idea has been presented in the form of a patent application, its genesis appears obvious and the path to reducing it to practice seems easy. Mr. Stout should not be denied his patent simply because in hindsight his invention seems simple.

(9) CONCLUSION

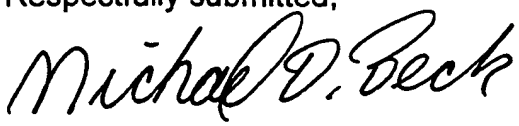
The Examiner committed reversible error with respect to the final rejection of Mr. Stout's claims 5 and 6. First, the Examiner improperly relied upon a citation of 'well known" prior art that was neither well known or beyond dispute. Second, even if this "well known" prior art is considered, the Examiner has not demonstrated that claims 5 and 6 of this application are obvious in view of U.S. Patent No.5,761,668 to Adamchick. To the contrary, Applicant has demonstrated that claims 5 and 6 are both novel and non-obvious in view of Adamchick.

The Examiner was further in error in refusing consideration of Mr. Stout's three declarations under 37 C.F.R. §1.131, swearing behind the Adamchick patent. Contrary to the grounds for refusal, these declarations demonstrate that Mr. Stout exercised reasonable diligence under his circumstances during the critical period. Proper consideration of these 131 Declarations eliminates the Adamchick '668 Patent as a reference, leaving no relevant prior art as a foundation for rejecting claims 5 and 6 as either anticipated or obvious.

Reversal of any of these errors is sufficient to reverse the final rejection of claims 5 and 6. Therefore, Applicant respectfully requests that the Board of

Patent Appeals and Interferences reverse the final rejection of claims 5 and 6 and remand this application for allowance.

Respectfully submitted,



Michael D. Beck
Attorney for Appellant
Registration No. 32,722

February 1, 2002

Maginot, Moore & Bowman
Bank One Center/Tower
111 Monument Circle, Suite 3000
Indianapolis, Indiana 46204-5130
Telephone (317) 638-2922
Facsimile (317) 638-2139

(10) APPENDIX

5. A series of operational steps to be performed by a computer, said steps comprising:

storing a plurality of date files within the computer, each said date file having 7 integers including;

a 4-digit decimal year represented in the first four integers of said 7 integers;

a 3 digit decimal day represented in the last three integers of said 7 integers;

in a central processing unit of the computer, adding said 7 integers of one of said plurality of date files to said 7 integers of another said plurality of sate files to generate a sum: and

adding 635 to said sum when the last three integers of said sum is in excess of 365 to generate a new date file representative of a new calendar date.

6. A series of operational steps to be performed by a computer, said steps comprising:

storing a plurality of date files within the computer, each said date file having 7 integers including;

a 4-digit decimal year represented in the first four integers of said 7 integers;

a 3 digit decimal day represented in the last three integers of said 7 integers;

in a central processing unit of the computer, subtracting said 7 integers of one of said plurality of date files to said 7 integers of another said plurality of sate files to generate a sum: and

subtracting 635 to said sum when the last three integers of said sum is in excess of 365 to generate a new date file representative of the number of years and days difference between the date files.